

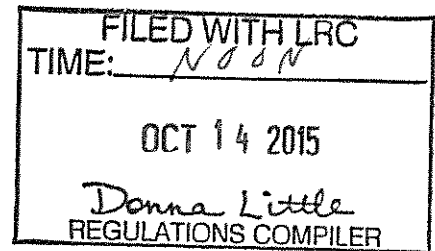
301 KAR 2:030

Commercial guide license

This administrative regulation establishes the requirements for a commercial guide license and guide helpers.

Significant Changes

This amendment will change the guide license year from a calendar year to the hunting and fishing license year (March 1 to the last day of February), add disqualifying and revocation criteria for guides and guide helpers, requires hunting guide helpers to meet the same qualifications as a licensed guide, reduces the revocation period from 3 years to 1 year for those convicted of a fish and wildlife violation, removes the requirement of a guide having to purchase an elk tag in order to guide elk hunting clients, and establishes a \$10 registration fee for guide helpers to cover the administrative costs associated with department review and guide helper registration.



1 TOURISM, ARTS AND HERITAGE CABINET

2 Kentucky Department of Fish and Wildlife Resources

3 (Amendment)

4 301 KAR 2:030. Commercial guide license.

5 RELATES TO: KRS 150.170, ~~[150.175,]~~ 150.412

6 STATUTORY AUTHORITY: KRS ~~[150.015,]~~ 150.025, 150.175(11), 150.190

7 NECESSITY, FUNCTION, AND CONFORMITY: ~~[KRS 150.015 authorizes the department to~~

8 ~~protect and conserve the wildlife of the Commonwealth.] KRS 150.025 authorizes the~~

9 department to promulgate administrative regulations to establish open seasons for the taking of

10 wildlife, to regulate bag limits and methods of take, and to make these requirements apply

11 statewide or to a limited area ~~[protect fish and game from overharvest]. KRS 150.175(11)~~

12 authorizes the department to issue a commercial guide's license, which authorizes the holder to

13 guide hunting and fishing parties. KRS 150.190 authorizes the department to ensure that an

14 applicant for a commercial guide license is qualified to act as a commercial guide. ~~[EO 2008-~~

15 ~~516, effective June 16, 2008, reorganizes and renames the Commerce Cabinet as the Tourism,~~

16 ~~Arts and Heritage Cabinet.] This administrative regulation establishes~~ ~~[is necessary to establish]~~

17 the requirements for a commercial guide license and a guide helper.

18 Section 1. Definitions. (1) "Commercial guide" means a person who advertises or offers their

19 services for remuneration to ~~[direct, instruct (excluding seminars), or]~~ aid others in taking

20 wildlife, excluding classroom instruction or seminars.

21 (2) "Directly supervised" means that the commercial guide license holder is in the same boat or

directly along side of the commercial guide helper if standing on a stream or river bank [~~"Creel limit" is defined in 301 KAR 1:201~~].

(3) [~~"Direct supervision" means supervision in the approximate vicinity sufficient to provide immediate medical assistance.~~

(4) "Fishing Guide helper" means a person [~~without a commercial guide license~~] who is directly supervised by a commercial guide while guiding others [~~involved~~] in the taking of fish [~~wildlife~~].

(4) "Hunting guide helper" means a person who is acting on behalf of a commercial guide license holder, is registered with the department, and whose actions in the field assist in the taking of game animals, but shall not include individuals assisting only in the recovery and removal of dead game, or tracking wounded game.

[~~(5) "Take" is defined in KRS 150.010(37).~~

[~~(6) "Wildlife" is defined in KRS 150.010(41).~~]

Section 2. Commercial Guide License Requirements and Application. (1) A person [~~wanting to commercially guide for wildlife~~] shall possess a valid Kentucky commercial guide license in order to commercially guide others in [~~provided by~~] the taking of wildlife [~~department~~].

(2) A commercial guide license is valid from March 1 through the last day of February [~~for one (1) calendar year~~].

(3) An applicant of a commercial guide license shall:

(a) Be eighteen (18) years of age or older;

(b) [~~Have~~] not been convicted of any state or federal fish or wildlife violation [~~game violations~~] during the previous three (3) years;

(c) Not been convicted of a felony.

1 ~~(d)~~ Possess a valid [all-necessary] fishing license and trout permit if applicable ~~[licenses and~~
2 ~~permits in order to receive a commercial guide license for fishing]; and~~

3 ~~(e) [(d)]~~ Possess a valid [all-necessary] hunting license and all applicable game ~~[licenses and]~~
4 ~~permits [in order to receive a commercial guide license for hunting].~~

5 (4) An elk permit shall not be required to be purchased by a commercial guide or hunting guide
6 helper in order to guide clients in the taking of elk.

7 ~~(5)~~ In order ~~[An applicant wanting]~~ to obtain ~~[apply for]~~ a commercial guide license, a person
8 shall submit to the department:

9 (a) A completed ~~[An]~~ application for a commercial guide license to the Director's Office,
10 Division of Law Enforcement, #1 Sportsman's Lane, Frankfort, Kentucky 40601;

11 ~~(b) [A signed affidavit from two (2) separate character references documenting the applicant is~~
12 ~~experienced in the field in which they are guiding and that the applicant is of good moral~~
13 ~~character and in good physical condition;~~

14 ~~(c) [Proof of]~~ a Law Information Network of Kentucky National Crime Information Center
15 (LINK/NCIC) [(NCIC/LINK)] background check obtained through the Kentucky State Police;

16 ~~(d) [(d) Effective January 1, 2010;]~~ proof of a valid and up to date certification in:
17 1. cardiopulmonary resuscitation (CPR); and
18 2. first aid.

19 ~~(d) [Certifications shall be maintained as specified by the certifying organization;~~

20 ~~(e)]~~ Proof of completion of a boater education course when applying for a commercial guide
21 license for fishing in a boat ~~[An applicant may complete the online boater education course~~
22 ~~available by accessing the department's Web site at <http://fw.ky.gov> to satisfy this requirement];~~

23 ~~(e) [and~~

1 ~~(f)~~ Proof of completion of a hunter education course~~[- or a valid hunter education exemption~~
2 ~~permit available by accessing the department's Web site at <http://fw.ky.gov>;~~] when applying for a
3 commercial guide license for hunting. A commercial guide applicant who guides hunters by boat
4 shall also submit proof of completion of a boater education course; and

5 (f) A \$10 registration fee for each hunting guide helper to be used by the commercial guide ~~[or~~
6 ~~the online boater education course].~~

7 ~~[(5) A commercial guide who has possessed a commercial guide license for the past three (3)~~
8 ~~consecutive years shall not be required to submit the two (2) character reference affidavits, as~~
9 ~~established in this Section of this administrative regulation, when applying for a commercial~~
10 ~~guide license.]~~

11 (6) A commercial guide applicant who possesses a valid United States Coast Guard Captain's
12 License, or "six pack", ~~["six pack"]~~ and will guide on a United States Coast Guard regulated
13 waterway may submit a copy of this license in lieu of the boater education course requirements,
14 as established in this section when applying for a commercial guide license.

15 (7) [Effective January 1, 2010,] a commercial guide applicant who possesses a valid U.S. Coast
16 Guard Captain's License, or "six pack", ~~["six pack"]~~ and will guide on a U.S. Coast Guard
17 regulated waterway may submit a copy of this license in lieu of the CPR and first aid
18 requirements, as established in subsection (4) of this section, when applying for a commercial
19 guide license.

20 (8) While guiding, a commercial guide shall have in possession all required licenses and permits.

21 Section 3. Guide Helper. (1) A commercial guide may utilize fishing guide helpers and hunting
22 guide helpers ~~[provided they are under the direct supervision of the commercial guide, except on~~
23 ~~lands owned or leased by the commercial guide].~~

1 (2) A fishing guide helper shall have in possession while assisting a commercial guide a valid
2 Kentucky;
3 ~~(a) Have in possession all necessary~~ fishing license and applicable permits. ~~[licenses and~~
4 ~~permits; and~~
5 ~~(b) Be accompanied in the boat by a commercial guide;~~
6 (3) A hunting guide helper shall have in possession while assisting a commercial guide ~~[have in~~
7 ~~possession]~~:
8 (a) A valid Kentucky ~~[All necessary]~~ hunting license ~~[licenses]~~ and applicable game permits;
9 (b) Proof of completion of ~~[(b)1-]~~ A hunter education course ~~[card]~~; ~~or~~
10 ~~2. A valid hunter education exemption permit; and~~
11 (c) Proof of completion of A boater education course ~~[card]~~ if helping a commercial guide by
12 boat; and
13 (d) A hunting guide helper certification card.
14 (4) Effective March 1, 2016 ~~[January 1, 2010]~~, a hunting guide helper ~~[wishing to work beyond~~
15 ~~the direct supervision of the commercial guide]~~ shall be required to provide proof of a valid and
16 up-to-date certification in:
17 (a) [have] cardiopulmonary resuscitation (CPR); and
18 (b) first aid ~~[certification]~~.
19 (5) A hunting guide helper shall be registered with the department by the licensed commercial
20 guide they represent.
21 (6) An applicant for a hunting guide helper shall:
22 (a) Be at least eighteen (18) years old;
23 (b) Not be convicted of a state or federal fish or wildlife violation during the previous three (3)

1 years; and

2 (c) Not been convicted of a felony [~~Certifications shall be maintained as specified by the~~
3 ~~certifying organization~~].

4 Section 4. Commercial Guide License Prohibitions and Revocation. (1) A commercial guide or
5 guide helper shall not participate in the taking of fish or game beyond the bag limit or creel limit
6 of the person or persons being guided, except that a commercial guide or guide helper may take a
7 [their] daily bag or creel limit of fish or game while guiding.

8 (2) The department shall revoke and not renew the commercial guide license or hunting guide
9 helper certification, for a period of one (1) year [~~three (3) years~~], of a person convicted of any
10 state or federal fish or game violation.

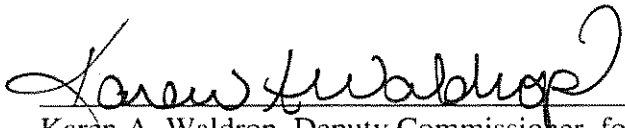
11 (3) The department shall permanently revoke the commercial guide license or hunting guide
12 helper certification of a person convicted of a felony.

13 (4) An individual whose commercial guide license or hunting guide helper certification has been
14 denied or revoked may request an administrative hearing pursuant to KRS Chapter 13B.

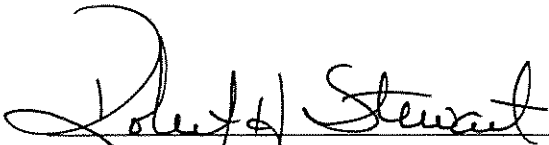
15 Section 5. Incorporation by Reference. (1) "Commercial Guide License Application", 2016
16 edition [07/18/08], is incorporated by reference.

17 (2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at
18 the Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky
19 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Approved by the Fish and Wildlife



Karen A. Waldrop, Deputy Commissioner, for
Gregory K. Johnson, Commissioner
Department of Fish and Wildlife Resources



Robert H. Stewart, Secretary
Tourism, Arts and Heritage Cabinet

10/7/15

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held on November 23, 2015, at 8:30 a.m. at the Department of Fish and Wildlife Resources in the Commission Room of the Arnold L. Mitchell Building, #1 Sportsman's Lane, Frankfort, Kentucky. Individuals interested in attending this hearing shall notify this agency in writing by five business days prior to the hearing of their intent to attend. If no notification of intent to attend the hearing is received by that date, the hearing may be canceled.

This hearing is open to the public. Any person who attends will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made.

If you do not wish to attend the public hearing, you may submit written comments on the proposed administrative regulation through November 30, 2015.

Send written notification of intent to attend the public hearing or written comments on the proposed administrative regulation to:

Rose Mack
Department of Fish and Wildlife Resources
Arnold L. Mitchell Building
#1 Sportsman's Lane
Frankfort, Kentucky 40601
(502) 564-3400 FAX (502) 564-9136
Email: fwpubliccomments@ky.gov

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

301 KAR 2:030. Commercial guide license.

Contact Person: Rose Mack

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the requirements for a commercial guide license and guide helpers.

(b) The necessity of this administrative regulation: This regulation is necessary to establish minimum regulatory standards and qualifications for commercial guides and commercial guide helpers.

(c) How this administrative regulation conforms to the content of the authorizing statutes: KRS 150.025 authorizes the department to promulgate administrative regulations to establish open seasons for the taking of wildlife, to regulate bag limits and methods of take, and to make these requirements apply statewide or to a limited area. KRS 150.175(11) authorizes the department to issue a commercial guide's license, which authorizes the holder to guide hunting and fishing parties. KRS 150.190 authorizes the department to ensure that an applicant for a commercial guide license is qualified to act as a commercial guide.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation will assist in the effective administration of the statutes by establishing the minimum standards and qualifications for commercial guides and commercial guide license helpers and ensures that an applicant is qualified to act as a commercial guide.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: This amendment will change the guide license year from a calendar year to the hunting and fishing license year (March 1 to the last day of February), add disqualifying and revocation criteria for guides and guide helpers, requires hunting guide helpers to meet the same qualifications as a licensed guide, reduces the revocation period from 3 years to 1 year for those convicted of a fish and wildlife violation, removes the requirement of a guide having to purchase an elk tag in order to guide elk hunting clients, and establishes a \$10 registration fee for guide helpers to cover the administrative costs associated with department review and guide helper registration.

(b) The necessity of the amendment to this administrative regulation: This amendment is necessary to strengthen the requirements for commercial guides and registered guide helpers, to have commercial guide license year conform to the hunting and fishing license year, to prevent convicted felons from being a commercial guide or guide helper, and to reduce the revocation period for commercial guides to mirror the revocation period for commercial nuisance wildlife control operators.

(c) How the amendment conforms to the content of the authorizing statutes: See (1)(c) above.

(d) How the amendment will assist in the effective administration of the statutes: See (1)(d) above.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: All individuals who commercially guide

clients will be affected by this amendment. For the 2014 license year, a total of 181 resident and 15 non-resident commercial guide licenses were sold. In the past, the department was unaware of how many guide helpers were in the state, but the new system will require hunting guide helpers to be registered with the department.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Hunting guide helpers will be required to meet the same qualifying criteria as commercial hunting guides. Commercial guides will be required to register all their helpers with the department and pay a \$10 administrative fee for each helper. Any person with a felony conviction will be unable to be licensed as a guide or a guide helper. A commercial guide applicant will not be able to obtain a license if convicted of a fish and wildlife violation in the last 3 years. A helper applicant will be unable to work for a guide if convicted of a fish and wildlife violation in the past 3 years.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): The resident commercial guide license will continue to cost \$150. It will also cost the commercial guide an additional \$10 to register each commercial guide helper on their application.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): The revocation period for commercial guides was reduced from 3 years to 1 year for those convicted of a fish and wildlife violation. Hunting guide helpers will be more qualified to assist commercial guides. The license year for a commercial guide will now be more convenient and conform to hunting and fishing license years (March 1 through the end of February). 2015 commercial guides will also benefit from receiving an extra 2 months in 2016 without having to obtain a new license.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: This administrative regulation change will result in a nominal administrative cost to the Department for having to verify that the guide helpers meet the qualifying criteria and to produce them with proof via a document or card.

(b) On a continuing basis: There will be a slight additional administrative cost cost on a continuing basis.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: The source of funding is the State Game and Fish Fund.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: It will be necessary to increase the fees that a commercial guide license holder pays if they use hunting guide helpers in order to offset administrative processing costs.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: Yes. This amendment establishes a \$10 administrative processing

fee for registering each hunting guide helper that a commercial guide employs.

(9) TIERING: Is tiering applied? (Explain why or why not) Tiering was not applied because all individuals wishing to be a commercial guide or commercial guide helper are treated equally.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

Regulation Number: 301 KAR 2:030

Contact Person: Rose Mack

Phone number: (502) 564-3400

(1) What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Department of Fish and Wildlife Resources Divisions of Fisheries, Wildlife, and Law Enforcement will be impacted by this administrative regulation.

(2) Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation: KRS 150.025, 150.175(11), and 150.190.

(3) Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for the first year? It is unknown how many hunting guide helpers will be registered with the department in the first year, but it is unlikely to generate more than \$3,000 or \$4,000 total.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? It is unknown how many hunting guide helpers will be registered with the department in subsequent years, but it is unlikely to generate more than \$3,000 or \$4,000 in subsequent years.

(c) How much will it cost to administer this program for the first year? It is expected that the registration fee for hunting guide helpers should offset the additional administrative costs to the agency during the first year.

(d) How much will it cost to administer this program for subsequent years? It is expected that the registration fee for hunting guide helpers should offset the additional administrative costs to the agency during subsequent years.

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures (+/-):

Other Explanation:

Summary of Material Incorporated by Reference

and

Summary of Changes to Material Incorporated by Reference

Summary of Material Incorporated by Reference

- (1) The "Commercial Guide License Application Form" is a three-page single-sided application for an annual permit that is required to be obtained by individuals who wish to act as a commercial hunting or fishing guide within the Commonwealth of Kentucky and is available to the public from the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky.

Summary of Changes to Material Incorporated by Reference

- (1) The "Commercial Guide License Application Form" is a three-page single-sided application for an annual permit that is required to be obtained by individuals who wish to act as a commercial hunting or fishing guide within the Commonwealth of Kentucky and is available to the public from the Kentucky Department of Fish and Wildlife Resources, #1 Sportsman's Lane, Frankfort, Kentucky. The form was amended as follows:

The form was changed from a three-page double-sided form to a three-page single-sided form. In the upper right-hand corner, "Revised 2016" was added. On the first page, "Mail to:" was inserted between the first and second line of the form title. On the sixth line, "Ky." was deleted and "KY" was inserted. After "301 KAR 2:030 may be accessed via lrc.ky.gov/kar/title301.htm", "All applicants must complete the following section:" was deleted. On the next line, "#" was inserted after "Social Security". "Date of Birth (mm/dd/yyyy) _____" was inserted on the next line. On the following line, "Telephone #" was deleted and "City" was inserted. On the next line, "City _____" was deleted and "Phone _____" was inserted at the end of the line. "Email Address _____" was inserted on the following line. On the first line of the next section, "Amount Enclosed _____" was deleted. "Total Amount Enclosed _____" was inserted on the following line. At the bottom of the form, "the" was deleted after "Frankfort office. Mail". On the same line after "application", ", all required documentation" was inserted. The following was inserted at the very bottom of the form:

"STATEMENT OF FACT (Required by KRS 164.772)

I hereby state that I am not in arrears or default on a repayment obligation under any financial assistance program with Kentucky Higher Education Assistance Authority.

I understand that if I am in arrears or default on a repayment obligation under any assistance program with Kentucky Higher Education Assistance Authority, my permit will not be issued or renewed.

Applicant Signature_____.”

On the second page, the following was deleted at the top of the form:

“STATEMENT OF FACT (Required by KRS 164.772)

I hereby state that I am not in arrears or default on a repayment obligation under any financial assistance program with Kentucky Higher Education Assistance Authority.

I understand that if I am in arrears or default on a repayment obligation under any financial assistance program with Kentucky Higher Education Assistance Authority, my permit may not be issued or renewed.

Signature

Commercial Guide License expires December 31st

	Resident commercial guide license	\$150.00
	Non-resident commercial guide license	\$400.00

Check appropriate line and provide additional information as requested.” and the following was inserted:

“Select One

Resident Commercial Guide License \$150.00

Non-resident Commercial Guide License\$400.00

Select One.”

After “I plan to be a fishing guide”, “in these waters _____” was deleted. After “I plan to be a hunting guide”, “in these waters _____” was deleted. After “I plan to guide for both hunting”, “&” was deleted and “and” was inserted. On the same line, after “fishing”, “in the following waters and areas: _____” was deleted.

The next section was deleted in its entirety and replaced with the following:

"Hunting Guide Helper Registration (\$10.00 each)

Name _____ DOB _____
SSN# _____
Name _____ DOB _____
SSN# _____
Name _____ DOB _____
SSN# _____
Name _____ DOB _____
SSN# _____
Name _____ DOB _____
SSN# _____

***The following items must be submitted for each year by the Commercial Guide License Applicant. These items are required for all commercial guide license applicants AND each person registered as a hunting guide helper.**

_____ NCIC/LINK check – Background check from Kentucky State Police – and hunting guide helpers must have a CURRENT background check each year. The background check can be found at:
http://www.kentuckystatepolice.org/background_check_forms.html

_____ Hunter Education Certificate – for those applying to be hunting guides and hunting guide helpers

_____ Boater Education Certificate – for those guiding hunters or fishermen by boat

_____ CPR Certification – All applicants and hunting guide helpers

_____ First Aid Certification – All applicants and hunting guide helpers

If you possess a current USCG OUPV Captain's license, you may send a copy of it in lieu of the Boater Education, CPR and First Aid Certification.

Please make checks or money orders payable to: Kentucky State Treasurer

When we receive all needed information, your application will be reviewed by the Director of the Law Enforcement Division. Incomplete applications will not be processed and will be returned to the applicant."

The following language was inserted at the top of the third page:

"For questions concerning Commercial Guide License Regulations, please refer to 301 KAR 2:030 @ <http://www.lrc.ky.gov/kar/301/002/030.htm>

If you have additional questions, please call 1-800-858-1549 to speak with a representative from the Division of Law Enforcement.”

After the line after “OFFICE USE ONLY”, “☐ COURT NET” was deleted and “☐ IWVC” was inserted. On the net line, “☐ DISTRICT COMMANDER” was deleted and “☐ Courtnet” was inserted. After “Final Recommendations:”, “☐” was deleted and “☐” was inserted. On the same line, before “NO”, “☐” was deleted and “☐” was inserted. On the next line, after “If”, “No, give Reason:” was deleted and “no, provide justification:” was inserted. At the bottom of the page, “Law Enforcement Director: _____” was deleted and the following was inserted:

“KDFWR Law Enforcement Director or Designee

Signature: _____ Date: _____”.